

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

NorthWestern Corporation

Docket Nos. ER03-329-006

NorthWestern Energy Marketing, LLC

ER02-41-006

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, AS MODIFIED

(Issued July 5, 2005)

1. In this order, the Commission accepts an updated market power analysis filed by NorthWestern Corporation doing business as NorthWestern Energy and NorthWestern Energy Marketing, LLC (NEM) (Collectively NorthWestern or Applicants).¹ As discussed below, we conclude that, with the tariff modification directed herein, Applicants satisfy the Commission's standards for market-based rate authority. Applicants' tariffs incorporating the Commission's market behavior rules were previously accepted by the Commission.²

¹ NorthWestern should have filed an updated market power analysis by January 6, 2000, three years from the date the Commission accepted their previous analysis. NorthWestern, however, did not file its next analysis until December 13, 2004, approximately four years out of time. NorthWestern's next updated market power analysis is due within three years of the date of this order. We expect that filing to be made in a timely fashion or NorthWestern may lose its market-based rate authority.

² *NorthWestern Energy*, Docket No. ER03-329-003 (March 19, 2004) (unpublished letter order). *NorthWestern Energy Marketing, LLC*, Docket No. ER02-41-004 (March 19, 2004) (unpublished letter order).

2. This order also terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to NorthWestern Energy Marketing, LLC. ³ NorthWestern Energy Marketing already had an updated market power analysis on file, and thus was inadvertently included in the Docket No. EL05-111-000 proceeding.

3. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. NorthWestern's next updated market power analysis is due three years from the date of this order.

Background

4. On December 13, 2004, NorthWestern submitted for filing a revised updated market power analysis, pursuant to the Commission's orders granting Applicants authority to sell electric energy and capacity at market-based rates.⁴ The December 13, 2004 filing addresses the two market power screens that the Commission recently adopted for its generation market power analysis.⁵

5. NorthWestern states it acquired its electric transmission and gas facilities from Montana Power Company as the result of electric restructuring in Montana, and that it operates a 3 MW hydroelectric facility.⁶ NorthWestern states it has a long-term contract with PPL Montana for 450 MW (300 baseload and 150 on peak) which expires in 2007 and 99 MW from power purchase agreements with qualifying facilities. NorthWestern states further that its long-term contracts consist of 552 MW of capacity to serve peak load obligations in its control area of about 1,500 MW. NorthWestern states that it meets its net short position through a variety of short-term contracts.

³ See *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (instituting a section 206 proceeding for the listed entities that had failed to comply with the requirement to submit an updated or revised market power analysis).

⁴ *MP Energy, Inc.*, 78 FERC ¶ 61, 005 (1997) and *NorthWestern Energy Marketing, LLC*, Docket No. ER02-41-000 (January 22, 2002) (unpublished letter order).

⁵ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁶ NorthWestern also states it has a leasehold interest in a generating facility, Colstrip Unit 4, of 222 MW of capacity that is committed to unaffiliated third parties under long term contracts that expire in 2010.

6. In addition, NorthWestern states it owns 517 MW of generation capacity in the Western Area Power Administration's (WAPA) Upper Great Plains East control area in South Dakota.

Notice of Filing and Responsive Pleadings

7. Notice of NorthWestern's December 13, 2004 Filing was published in the *Federal Register*, 69 Fed. Reg. 78,010 (2005), with interventions or protests due on or before January 3, 2005. PPL Montana, LLC filed an intervention raising no issues.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely filed motion to intervene submitted by PPL Montana, LLC serves to make it a party to this proceeding.

Market-Based Rate Authorization

9. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁸ As discussed below, the Commission concludes that, with the tariff modification directed herein, NorthWestern satisfies the Commission's standards for market-based rate authority.

⁷ 18 C.F.R. § 385.214 (2004).

⁸ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

Generation Market Power

10. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.⁹ NorthWestern prepared both screens for the NorthWestern control area and the WAPA Upper Great Plains East control area.¹⁰ NorthWestern asserts that it and its affiliate pass the pivotal supplier screen and the wholesale market share screen in both control areas. The Commission has reviewed NorthWestern's generation market power screens and has determined that NorthWestern passes the screens in both its home control area and the WAPA Upper Great Plains East control area. NorthWestern passes the indicative screens without considering competing supplies imported into its control area. Therefore, the Commission makes no finding on NorthWestern's simultaneous import capability study submitted for its control area. Accordingly, the Commission finds that NorthWestern satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

11. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. NorthWestern states that it has an OATT on file with the Commission.¹¹ Further, no intervenor raised transmission market power concerns. Based on NorthWestern's representation, the Commission finds that NorthWestern satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

12. NorthWestern states that it does not have the ability to erect barriers to entry due to its control over fuels or fuel delivery systems because NorthWestern's Montana intrastate natural gas system is governed by existing regulatory provisions to ensure non-discriminatory access. Further, no intervenor has raised concerns regarding barriers to entry. Based on NorthWestern's representations, the Commission is satisfied that

⁹ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108, order on reh'g, 108 FERC ¶ 61,026 (2004).

¹⁰ NorthWestern's analysis did not include first-tier markets because its results show it has zero uncommitted capacity in its control area.

¹¹ *Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures*, 80 FERC ¶ 61,143 (1997).

NorthWestern cannot erect barriers to entry. However, should NorthWestern or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of NorthWestern's authority to sell power at market-based rates.¹²

Affiliate Abuse

13. NorthWestern states that, as a result of Montana's restructuring laws, it has already divested its Montana generation, separated its distribution/transmission and marketing functions, and is currently adhering to both the Commission's and the Montana Public Service Commission's mandated and approved electric and natural gas standards of conduct. The Commission notes that NorthWestern Energy and NorthWestern Energy Marketing have a code of conduct on file with Commission. However, the Commission's review of NorthWestern Energy and NorthWestern Energy Marketing's market-based rate tariffs indicates that the tariffs do not prohibit sales to an electric utility affiliate with a franchised service territory "without first receiving" Commission authorization of the transaction under section 205 of the Federal Power Act. Therefore, consistent with Commission precedent, NorthWestern Energy and NorthWestern Energy Marketing are directed to make a compliance filing within 30 days of the date of issuance of this order to revise their market-based rate tariffs to include such language.¹³ Based on NorthWestern's representations and subject to the tariff revision directed herein, we find that NorthWestern satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

14. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

¹² See, e.g., *Louisville Gas & Electric Company*, 62 FERC ¶ 61,016 (1993).

¹³ *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002) (*Aquila*).

greater) market-based power sales during the most recent calendar quarter.¹⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁵

15. NorthWestern must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁶ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, NorthWestern is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

¹⁴ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁵ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

16. NorthWestern is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

A) NorthWestern's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) NorthWestern's next updated market power analysis is due within three years of the date of this order.

(C) NorthWestern is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(D) NorthWestern Energy and NorthWestern Energy Marketing are directed to revise the affiliate sales prohibition language in their market-based rate tariffs within 30 days of the date of issuance of this order, as discussed in the body of this order.

(E) NorthWestern Energy Marketing's inclusion in Docket No. EL05-111-000 is terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary